IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

FAO.No. 273 of 2006()

AS.90/2005 of ADDITIONAL DISTRICT COURT (ADHOC)-II, KOLLAM
OS.252/2000 of MUNSIFF-MAGISTRATE COURT, PARAVOOR
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APPELLANT/1ST RESPONDENT/PLAINTIFF:

BHAGEERATHI,
PALAVILA VEEDU, POOTHAKULAM VILLAGE,
PARVOOR, KOLLAM.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS: APPELLANT AND RESPONDENTS 2 AND 3/DEFENDANTS:1
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1. **SREE VARNAN,**
   PALAVILA VEEDU, PUTHAKULAM VILLAGE, PARAVOOR,
   KOLLAM THROUGH HIS POWER HOLDER CHANDRA DASAN,
   ISWARYA, PUTHAKULAM, POOTHAKULAM VILLAGE.

2. **USHA DEVI, W/O. RAJU,**
   MARANVILA VEEDU, PEROOR, KILIKOLLOOR POST,KOLLAM.

3. **NINAMBIKA, W/O. R.K.KRISHNAN,**
   R.K. BHAVANAM (VARUVILA VEEDU), THETTIKULAM,
   POOTHAKULAM, KOLLAM.

BY ADV. SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR
SRI. RAJA VIJAYARAGHAVAN - R1

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

F.A.O.No.273 of 2006

Dated this the 19th November, 2007.

J U D G M E N T

The plaintiff in O.S.No.252/2000, on the file of the Munsiff Magistrate Court, Paravoor, is the appellant herein. The suit was filed for a declaration that the plaintiff was having absolute title over the properties covered by Exts.A1 and A2, settlement deed and gift deed, and also for a declaration that Exts.A4, A5 and A6 documents and other documents created thereafter as void abinitio and not binding on the plaintiff, or in the alternative, for setting aside Exts.A4, A5 and A6 documents holding that those documents had not taken effect. The plaintiff had also sought for a decree of permanent prohibitory injunction restraining the defendants from trespassing into the property. The plaintiff claimed title to and possession over the suit property under Ext.A1, settlement deed No.789/1952 and Ext.A2 Gift Deed No.3255/1959. It was averred that the first defendant got married in the year 1989 and thereafter his relationship with the plaintiff became strained. It was averred that elder son of the appellant died on 1985, and she was totally depressed, she had lost contact with anybody and she was not aware of what was happening around

her. It was further averred that first defendant was asserting and controlling the family affairs. Defendants took away all the documents from the custody of the plaintiff, including the documents in connection with plaint schedule properties and plaintiff was unaware of that fact. It was further averred that in June, 2000, appellant approached the Village authorities for paying the revenue tax, and then she was told that the defendants created two documents as Settlement Deed No.1938 of 85, dated 15.4.1985 and Settlement Deed and Sale deed No.479/89, dated 14.2.1989, as evidenced by Exts.A4 and A5. It has also come to her knowledge that another document was executed as Enjoyment and Possession Deed No.452/2000, dated 4.2.2000, purporting to create life interest in her favour over the plaint B schedule property. It was averred that second defendant fraudulently created a document No.1938/1985 in connection with plaint A schedule property in 1985. Defendants 1 to 3 colluded together and created a document as sale and settlement deed No.479/1989, in respect of both plaint A and B schedule properties, and the appellant was unaware of such document. She never affixed her signature in that document or put her thumb impression.

2. It was contended that appellant is an illiterate woman and defendants have exploited her. It was also contended that though the documents was styled as settlement, it does not satisfy the legal requirements of a gift deed. It was further averred that at the time of alleged execution of documents, plaintiff was in a depressed condition, because of the death of her eldest son. It was further averred that though the documents were executed in 1985 & 1989, the defendants kept that fact as a secret and she came to know about that documents only in the year 2000. It was further alleged that the respondents have no right over the property and those documents are void abinitio. Hence, the suit to declare Exts.A4, A5 and A6 as void documents and for a declaration that those documents do not bind the appellant or her right over the suit properties.

3. The first defendant alone contested the matter. He contended that plaint A schedule property was gifted by the plaintiff in favour of the second defendant and she sold the same to the first defendant under Ext.A5 sale and settlement deed. The averment that plaintiff is having absolute title over the property was denied. It was contended that the appellant is having only a life estate over the property. The averment that appellant was depressed and she was

under the control of the first defendant was denied. The averment that he took away the documents also was denied. It was contended that the plaintiff's husband and the father of the defendants was alive on that date, and he was looking after all the affairs of the plaintiff during that period. It was contended that under Ext.A5, plaintiff and defendants 2 and 3 have jointly executed sale cum settlement deed in respect of plaint A and B schedule properties and he became the absolute owner of the properties and under Ext.A6 document, he created a life estate over the appellant for her maintenance. It was averred that Ext.A4 and other documents were genuinely executed by the plaintiff. Appellant herself had executed those documents before the Sub Registrar's office. So, he prayed for a dismissal of the original suit.

4. The trial court found that plaintiff got properties under Exts.A1 and A2 settlement and gift deeds. The Court found that inspite of the specific denial of the execution of the documents by the plaintiff, defendants did not produce the original of Ext.A4 and A5, and hence found that those documents are fraudulently executed and not binding on the plaintiff-appellant, and declared her title and possession over the property. It was further held that Ext.A6 was

executed on the strength of Ext.A5, and hence that document is also void and declared so. Challenging the decree and judgment passed by the trial court, first defendant filed A.S.No.90/2005. The learned District Judge, after considering the matter, set aside the decree and judgment passed by the trial court, and remanded the case to the trial court for fresh disposal. Challenging that order of remand, plaintiff has filed this appeal.

5. The learned counsel appearing for the appellant has submitted that the trial court has properly considered the issues arising for consideration and decreed the suit. It is argued that lower appellate court without assigning any proper reason set aside the decree and judgment passed by the trial court, and remanded the matter.

6. The learned counsel appearing for the first defendant submitted that the first defendant is working in Gulf country, as could be seen from the address given in the plaint itself. It is argued that the contention of the appellant that he was dominating over the Will the plaintiff-appellant is a false statement. As the first defendant was away in the Gulf country, in fact, in the suit, he was

represented by his power-of-attorney holder. It is argued that plaintiff herself had admitted that after executing the sale cum settlement deed, on the very next day, she along with the first defendant went to the Bank and pledged the original document with the Bank. It is argued that plaintiff herself has filed a petition to issue summons to the Sub Registrar to produce certain original registers which contains the thump impression and signature of the appellant. It is argued that the trial court after dismissing that petition wrongly cast burden of proof on the respondents.

7. It is submitted by the appellant that she got the properties under Exts.A1 and A2. The specific case put forward by the first defendant is that Exts.A4 and A5 were produced before a bank for obtaining the loan. It is not disputed that first defendant is working in Gulf country and he was represented by his power-of-attorney holder. It is pointed out that plaintiff herself had filed a petition to issue summons to the Sub Registrar to produce the documents. It is argued that when the plaintiff herself had filed such a petition, there was absolutely no justification in dismissing the petition and then granting a decree in favour of the plaintiff. I have carefully gone through the order of remand. The lower appellate court remanded the

matter to afford an opportunity to adduce further evidence. No substantial questions of law arises in this F.A.O. So, the order of remand is only to be confirmed.

In the result, the appeal is dismissed. The judgment, dated 23.8.2006, passed by the lower appellate court is confirmed. The Trial Court is directed to dispose of the matter, after giving both sides a reasonable opportunity to adduce further evidence, if so advised.

Parties are directed to appear before the court below on 18.1.2008.

K.PADMANABHAN NAIR,
JUDGE

nj.